REMARKS

This is a full and timely response to the non-final Official Action mailed October 6, 2005. Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

Claim Status:

By the foregoing amendment, various claims have been amended. Additionally, new claims 36-41 have been added. Claims 6, 7 and 9-13 were withdrawn under a previous Restriction Requirement. To expedite the issuance of this application, claims 6, 7 and 9-13 have been cancelled herein without prejudice or disclaimer. Applicant reserves the right to file any number of continuation or divisional applications to the cancelled claims or to any other subject matter described in the present application. Claims 17-35 were cancelled previously without prejudice or disclaimer. Thus, claims 1-5, 8, 14-16, and 36-41 are currently pending for further action.

Claim Rejections – 35 U.S.C. § 103:

Claims 1-5, 8, and 14-16 were rejected as unpatentable under 35 U.S.C. § 103(a) in view of U.S. Patent No. 5,312,439 to Loeb ("Loeb") or U.S. Patent No. 5,324,316 to Schulman et al. ("Schulman"), each in view of U.S. Patent No. 5,928,272 to Adkins et al. ("Adkins"), U.S. Patent No. 5,540,730 to Terry, Jr. et al. ("Terry-1"), U.S. Patent No. 5,330,507 to Schwartz et al. ("Schwartz"), U.S. Patent No. 5,335,657 to Terry, Jr. et al. ("Terry-2"), or U.S. Patent No. 5,330,515 to Rutecki et al. ("Rutecki"). For at least the following reasons, this rejection is respectfully traversed.

Claim 1, as amended herein, recites:

> A method of treating a patient with at least one of a cognitive disorder, dementia, an eating disorder, obesity, and an endocrine disorder, the method comprising:
> providing at least one leadless stimulator having at least two electrodes disposed thereon;
> implanting the at least one stimulator adjacent to at least one portion of the patient's vagus nerve;
> generating stimulation pulses with the stimulator in accordance with one or more stimulation parameters; and
> delivering the stimulation pulses to nerve fibers adjacent to at least one portion of the vagus nerve.

In contrast, the combination of Loeb or Schulman with Adkins, Terry-1, Schwartz, Terry-2, or Rutecki fail to teach or suggest treating a patient with at least one of a cognitive disorder, dementia, an eating disorder, obesity, and an endocrine disorder by stimulating the patient's vagus nerve with a leadless implantable stimulator. Loeb and Schulman both disclose an implantable microstimulator. The other cited references disclose methods for treating a variety of disorders by applying electrical stimulation pulses to the vagus nerve. These disorders consist of epilepsy (Adkins, abstract), motility disorders (Terry-1, col. 4, lines 5-10), arrhythmias (Schwartz, col. 2, lines 23-26), sleep disorders (Terry-2, col. 4, lines 24-31), and chronic pain (Rutecki, col. 6, lines 26-30).

However, none of the prior art of record teaches or suggests treating a cognitive disorder, dementia, an eating disorder, obesity, or an endocrine disorder by stimulating the patient's vagus nerve with a leadless implantable stimulator. The disorders as claimed in the present application are distinct and different from those discussed in the cited prior art. Consequently, one of ordinary skill in the art, reading of the disorders mentioned in Adkins, Terry-1, Schwartz, Terry-2, or Rutecki, would not think it obvious to stimulate the vagus nerve to treat a cognitive disorder, dementia, an eating disorder, obesity, or an endocrine

disorder. Consequently, the combination of Loeb or Schulman with Adkins, Terry-1, Schwartz, Terry-2, or Rutecki fails to teach or suggest the method of claim 1.

"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). For at least this reason, the rejection of claim 1 and its dependent claims, based on the combination of Loeb or Schulman with Adkins, Terry-1, Schwartz, Terry-2, or Rutecki should be reconsidered and withdrawn.

Double Patenting:

Claims 1-5, 8 and 14-16 were rejected as unpatentable under the judicially created doctrine of obviousness-type double patenting in view of U.S. Patent No. 6,725,475 to Whitehurst et al. ("Whitehurst") considered in light of U.S. Patent No. 5,330,515 to Rutecki et al. ("Rutecki"). Without necessarily agreeing with or acquiescing to the Examiner's reasoning, Applicant has submitted herewith a Terminal Disclaimer to overcome this rejection. Therefore, the double patent rejection should now be reconsidered and withdrawn.

New Claims:

The newly-added claims are thought to be patentable over the prior art of record for at least the same reasons given above with respect to the original claims. New claims 36 and 37 are directed to the elected subject matter. New claims 39-41 depend from claim 38 which is generic to all species claimed in the application. If claim 38 is found allowable, claims 39-41 will also be subject to examination and allowable. Consequently, examination and allowance of the new claims is respectfully requested.

Conclusion:

For the foregoing reasons, the present application is thought to be clearly in condition for allowance. Accordingly, favorable reconsideration of the application in light of these remarks is courteously solicited. If any fees are owed in connection with this paper which have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

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I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number 571-273-8300 on January 6, 2006. Number of Pages: 14

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